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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,326	10/31/2003	Edward A. Colombo	EAC-605	9822
46488	7590	01/11/2006		
JOHN M. HAMMOND PATENT INNOVATIONS LLC 150 LUCIUS GORDON DRIVE SUITE 205 WEST HENRIETTA, NY 14586			EXAMINER LHYMN, EUGENE	
			ART UNIT 3727	PAPER NUMBER
DATE MAILED: 01/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/698,326	COLOMBO, EDWARD A.	
	Examiner	Art Unit	
	Eugene Lhymn	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 7-14, 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goulette (US 5220999) in view of Bohrer (US 2003/0168451 A1).
With respect to claim 1, Goulette discloses a food container with a top and bottom, being made of transparent polystyrene (Col 3, Line 49) but fails to teach the bottom being foam, thus only the cover being transparent. However, it is noted that Goulette discloses that the container can be made from other suitable materials, such as opaque polymers. Nonetheless, Bohrer teaches that a food container having a transparent cover and an opaque bottom is well-known in the art [0004]. Having the container as such provides a means for viewing the contents of the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the bottom of Goulette to be opaque as taught by Bohrer so as to provide a means for viewing the contents of the container.

With respect to claim 2, Goulette discloses a first flap.

With respect to claim 3, Goulette discloses a second flap, wherein the first and second flaps are joined together.

With respect to claim 7, Goulette discloses the bottom being dish-shaped.

With respect to claim 8, Goulette discloses the top being dish-shaped.

With respect to claim 9, Goulette discloses the top being substantially planar, wherein the top is clearly substantially planar as shown in Fig. 2.

With respect to claims 10 and 12, Goulette discloses the claimed invention except for the container being at least 80 weight percent polystyrene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container at least 80 weight percent polystyrene since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claims 11 & 14, Goulette discloses the container being made entirely from polystyrene.

With respect to claim 13, Goulette discloses the top being made from a material other than polystyrene (Col 3, Lines 50-55).

With respect to claims 17 & 18, Goulette discloses the top and bottom having lips, as shown in Fig. 2.

With respect to claim 19, Goulette discloses the container being nestable.

3. Claims 4 & 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goulette in view of Bohrer as applied to claim 1 above, and further in view of Wind (US 3937389). With respect to claim 4, Goulette, as modified, discloses the claimed invention except for the hinge being joined via adhesive. However, Wind teaches a food container wherein the parts are joined via adhesive (Col. 4, Lines 1-5), thereby

providing a secure engagement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to adhere the hinge of Goulette as taught by Bohrer so as to provide a secure engagement.

With respect to claim 6, Goulette as modified above discloses the claimed invention except for the hinge being heat sealed. However, Wind teaches a food container wherein the parts are joined via heat sealing (Col. 4, Lines 1-5), thereby providing a secure engagement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to heat seal the hinge of Goulette as taught by Bohrer so as to provide a secure engagement.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goulette in view of Bohrer as applied to claim 1 above, and further in view of Connors et al. Goulette as modified above discloses the claimed invention except for the hinge being ultrasonically welded. However, Connors et al. teaches a container being ultra-sonically welded (Col. 5, Lines 53-54), thus providing a secure hinge. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to ultra-sonically weld the hinge of Goulette as taught by Connors et al. so as to provide a secure hinge.

5. Claims 15 & 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Goulette in view of Bohrer as applied to claim 1 above, and further in view of Warburton (US 5046659). With respect to claims 15 & 16, Goulette as modified above, discloses

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the claimed invention except for the bottom having a latch hole and the top having a latch tab, respectively. However, Warburton teaches a food container latching structure wherein the top has a tab and the bottom has a hole (Fig. 1), thus providing a secure engagement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the latch of Goulette to have a tab and hole as taught by Warburton so as to provide a secure engagement.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Edwards et al. (US 5339973)

Chen (US 6056138)


Hupp (US 6394299 B1)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JES F. PASCUA
PRIMARY EXAMINER